



707 - MILITARY LEAVE

Revised to include recent Amendment to Virginia Code, Section 4-93.3

I. GENERAL

The following policy is established to govern military leave and re-employment rights for employees who are engaged in federally funded military duty, including training duty, in any of the armed services of the United States, National Guard or Naval Militia or when called forth by the Governor pursuant to the applicable sections of the Code of Virginia. The policy incorporates applicable provisions of Federal or State law and City Code which govern military leave and covers procedures, compensation, benefits and employment status that are applicable during employees' absences on various types of federally funded military leave. If there is any discrepancy between this policy and Federal or State law, those provisions will prevail unless City policy is more generous. The Department of Human Resources should be contacted regarding any situations not addressed by this policy. It is the intent of this policy that the Uniformed Services Employment and Re-employment Rights Act (USERRA) apply even though its provisions are not set forth in every respect.

II. DEFINITIONS

- A. Federally funded military duty is time served in any of the uniformed services including:
- Active duty
 - Active duty for training
 - Initial active duty for training
 - Inactive duty training
 - Full time National Guard duty
 - Absence(s) from work for an examination to determine an employee's fitness for any of the above types of duty
- B. The uniformed services consist of the following:
- Army, Navy, Marine Corps, Air Force or Coast Guard including Reserves
 - Army National Guard, Air National Guard and Naval Militia
 - Commissioned Corps of the Public Health Service
 - Any other category of services designated by the President of the United States in time of war or emergency; or when called forth by the Governor of the Commonwealth pursuant to Virginia Code Section 44-75.1 or 44-78.1
- C. The federal fiscal year runs from October 1st through September 30th.

III. ELIGIBILITY FOR PAID MILITARY LEAVE

- A. Former members of the armed services or members of the uniformed services who are engaged in federally funded military duty, including training duty, are eligible for paid military leave as follows:

- Paid Military leave shall not exceed fifteen (15) workdays per federal fiscal year, subject to the limitation that paid military leave shall not exceed fifteen (15) workdays per federally funded tour of military duty.
 - If an employee also worked for the Commonwealth or another political subdivision during the same federal fiscal year, paid military leave would be limited to a total of fifteen (15) workdays.
- B. Paid military leave is not available to employees entering military service who are not former members of the armed services or members of the organized reserve forces of any of the armed services of the United States, National Guard, or Naval Militia.

IV. CALCULATION FOR PAID MILITARY LEAVE

The following are examples of how the 15 day paid leave period applies:

- A. A full time employee who works a standard eight (8) hour workday for a total of 2080 hours per year is entitled to fifteen (15) workdays at eight (8) hours per day or 120 hours of paid military leave per federal fiscal year.
- B. A full time employee who works a ten (10) hour workday for a total of 2080 hours per year is entitled to twelve (12) workdays at ten (10) hours per day or 120 hours of paid military leave per federal fiscal year.
- C. An employee who works four (4) hours per day for a total of 1040 hours per year is entitled to fifteen (15) workdays at four (4) hours per day or 60 hours of paid military leave per federal fiscal year.
- D. A Fire Department employee who works a 24-hour workday for a total of 2920 hours per year is entitled to seven (7) workdays at 24 hours per day or 168 hours of paid military leave per federal fiscal year.
- E. Military leave shall only be granted for those dates stated on the employee's military orders or other support documentation from a responsible military official.
- F. When an authorized City holiday falls during a period when an employee is on paid military leave, the holiday will not be counted toward the fifteen (15) days, nor will an alternate military leave day off be allowed.
- G. Following release from military duty, employee is entitled to time to safely travel home and an eight (8) hour rest period. Upon returning home, should the employee's scheduled work shift overlap the eight (8) hour rest period entitlement, the employee shall receive paid military leave for all overlapping time in which the employee utilizes the rest period. This overlap pay will be in addition to the fifteen (15) workdays of paid military leave for which the

employee is otherwise entitled.

H. Examples of leave entitlements are calculated as follows:

- Employee *A* has not taken any paid military leave during the federal fiscal year. Employee attends summer camp in July and is paid for the ten (10) eight (8) hour workdays of military leave. Since the law provides for up to fifteen (15) days of military leave per federal fiscal year, employee now has five (5) workdays remaining until September 30th to use for paid military leave should employee be required to be absent from work on a scheduled workday for military duty. This includes weekend drills that are regularly scheduled workdays.
- Employee *B* has not taken any paid military leave this federal fiscal year. Employee reports for six (6) months of military training duty on August 1st. The first fifteen (15) workdays in August will be considered paid military leave and the employee will be placed on leave without pay for the remaining military leave. Employee will not be entitled to another fifteen (15) workdays of paid military leave until the employee has returned to work, because the six (6) months of military training duty is considered one tour of duty.
- Employee *C* is a regular City employee who enlists in the Army and is issued orders to report for military duty on January 1st. Employee has never been a member of the armed services and is not a member of the organized reserve forces of any of the armed services of the United States, National Guard, or Naval Militia. Employee is not entitled to any paid military leave, but is entitled to unpaid leave and re-employment rights.
- Employee *D* was employed on November 1st. Employee has already received fifteen (15) workdays of paid military leave during October while employed with another employer. Employee will not be entitled to paid military leave again until the beginning of the next federal fiscal year on October 1st.
- Employee *E* was released from military duty Sunday at 12:00 noon. Employee flew home that evening and arrived at 2:00 a.m. on Monday following an airport delay and lost luggage. Employee was scheduled to begin work at 7:00 a.m. that morning. Since employee is not able to receive the mandatory eight (8) hour rest period before the start of the work shift at 7:00 a.m., employee would be excused from reporting to work until 10:00 a.m. This would provide employee the required eight (8) hour rest period. Employee would receive three (3) hours of paid military leave for the overlap between the start of work at 7:00 a.m. and the end of the required rest period at 10:00 a.m.

V. EMPLOYEE STATUS ON MILITARY LEAVE

- A. Employees shall be entitled to leaves of absence from their respective duties without loss of seniority, accrued leave, or efficiency rating on all days during which they are engaged in federally funded military duty, to include training duty, or when called forth by the Governor pursuant to the Code of Virginia.
- B. Under USERRA, employees shall also be entitled to other rights and benefits (whether or not based on seniority) that such employee would have received if the employee had not entered military service. Examples include general pay increases, special pay adjustments, certain retirement benefits and eligibility for normal leave accrual rates.
- C. Employees who attend federally funded military duty beyond the fifteen (15) workdays of paid military leave shall be granted the time off. At the option of the employee, the time beyond the paid military leave may be charged to paid personal leave, compensatory time or it may be taken as unpaid leave.
- D. Should unpaid leave exceed 30 workdays, the employee shall be placed on military leave in accordance with Personnel Administrative Manual (PAM), Section 704, Unpaid Leaves of Absence for a period not to exceed six (6) months from the date the unpaid leave began. Employees who have not returned to work prior to the end of their six (6) months unpaid leave of absence will be removed from the payroll, but shall retain all re-employment rights under USERRA and state law.

VI. REQUESTING LEAVE

- A. Unless precluded by military necessity, employees must provide advance written or oral notice prior to leaving for military duty. However, the recurring requirement to perform inactive duty training (drill) is an example of when written orders may not be formally issued. Upon request, employees must provide documentation of the military service following a military leave exceeding 30 days.
- B. Employees utilizing more than fifteen (15) workdays of paid military leave must notify their supervisor whether the leave should be charged to paid personal leave, compensatory leave or unpaid leave.

VII. RE-EMPLOYMENT RIGHTS AND RETURN TO DUTY

The following re-employment rights and return to duty requirements apply to regular employees released from active military service after a leave of less than 5 years. This includes reservists returning from training duty or temporary call-ups and it also applies to regular employees who left the City to enter full time military service.

- A. Regular employees who enter full time military duty with the active armed services of the United States will be granted unpaid leave and re-employment rights

- according to USERRA and State law.
- B. Upon release from active duty, employees shall be restored to positions held by them when ordered to military duty or to similar or comparable vacant positions under the following circumstances:
- The employee must have served for a cumulative period of five (5) years or less (unless their service fits into one of the excused categories as defined in USERRA);
 - The employee must be discharged under honorable conditions;
 - The employee must be qualified for the position in which he or she is reinstated; and
 - The employee's return to his or her position is within the time guidelines specified in USERRA.
- C. Time limits and specific employee actions as specified by USERRA for returning to work are as follows:
1. Service of 1 - 30 days

Employees must report by the beginning of the first regularly scheduled workday following completion of service and expiration of an eight (8) hour rest period following safe transportation home, unless a longer time period is permitted under USERRA.
 2. Service of 31 - 180 days

Employees' written requests for reinstatement must be made to the employees' department or the Department of Human Resources no later than fourteen (14) calendar days after completion of military duty, unless a longer time period is permitted under USERRA.
 3. Service of 181 or more days

Employees' written requests for reinstatement must be made to the employees' department or the Department of Human Resources no later than 90 calendar days after completion of military duty, unless a longer time period is permitted under USERRA.
- D. Service pursuant to Virginia Code 44-93.3:

Notwithstanding the provisions of sub-section C (1) above, members of the Virginia National Guard, Virginia State Defense Force or Naval Militia must make a written

request for reinstatement to their department within fourteen (14) days of their release from duty or from hospitalization for absences due to service in the uniformed services for less than 180 days. If the duration of the absence exceeds 180 days, such notice must be given within 90 days.

VIII. DEPARTMENT HEAD RESPONSIBILITIES

Department heads are responsible for the consistent application of this policy within their respective departments. Departments will establish guidelines for employees to submit requests for military leave and for monitoring such leave to ensure that no more than fifteen (15) workdays with pay are granted for military duty in any federal fiscal year subject to the limitation that the employee shall not be paid for more than fifteen (15) workdays per federally funded tour of active military duty.

Supersedes/Amends: 707, 09/01/07

Approved:



City Manager